

PT 99-10

Tax: PROPERTY TAX
Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

ASSEMBLY OF GOD CHURCH)	A.H. Docket #	98-PT-0023
OF SANDUSKY)		
Applicant)	Docket #	97-2-10
v.)	Parcel Index #	18-03-03-019-006
THE DEPARTMENT OF REVENUE)		
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Synopsis:

The hearing in this matter was held on June 2, 1998, at 2309 West Main Street, Marion, Illinois to determine whether or not Alexander County Parcel Index No. 18-03-03-019-006 qualified for exemption from real estate taxation for all or part of the 1997 assessment year.

Rev. Clark Short, pastor of the Assembly of God Church of Sandusky (hereinafter referred to as the "Applicant"), was present and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant is a religious organization; secondly, whether the applicant owned this parcel during all or part of the 1997 assessment year; and lastly, whether the applicant was either in the process of adapting this parcel and house for religious or exempt use or used this parcel and house for religious purposes during all or part of the 1997 assessment year. Following the submission of all of the evidence and a review of the record, it is determined that the applicant is a religious organization. It is also determined that the applicant owned and was in possession of this parcel during the period May 26, 1997,

through December 31, 1997. Finally, it is determined that the applicant began to use this house, except for the two bedrooms, for religious purposes on November 5, 1997. This use continued through the rest of the of the 1997 assessment year.

It is therefore recommended that 74% of this residence and 74% of this parcel be exempt from real estate taxation for 16% of the 1997 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that this parcel did not qualify for exemption for the 1997 assessment year, was established by the admission in evidence of Department's Exhibit Nos. 1 through 6A.

2. On September 15, 1997, the Alexander County Board of Review transmitted to the Department an Application for Property Tax Exemption To Board of Review concerning the parcel here in issue for the 1997 assessment year. (Dept. Ex. No. 2)

3. On January 29, 1998, the Department advised the applicant that it was denying the exemption of this parcel because this parcel was not in exempt use. (Dept. Ex. No. 3)

4. By a letter received by the Department on February 17, 1998, Rev. Short requested a formal hearing in this matter. (Dept. Ex. No. 4)

5. The hearing in this matter, conducted on June 2, 1998, was held pursuant to that request.

6. At the pre-trial conference in this matter, the Administrative Law Judge advised Rev. Short that it would be appropriate for the applicant to be represented by legal counsel. Rev. Short indicated that he wished to proceed without counsel. (Tr. p. 10)

7. The applicant acquired this parcel by a warranty deed dated May 12, 1997. (Dept. Ex. No. 2A)

8. The parcel here in issue is directly South of the applicant's church which is across Third Street from this parcel. (Appl. Ex. No. 6)

9. During 1997, the applicant held religious services in the sanctuary on Third Street on Sunday mornings at 11:00 A.M. and Sunday evenings at 6:00 P.M. There also was a midweek service on Wednesday evenings. (Tr. p. 11)

10. During 1997, there were approximately 75 members of the applicant. The average attendance on Sunday mornings during 1997 was approximately 60 persons. (Tr. p. 12)

11. The applicant acquired possession of this parcel and the house thereon on May 26, 1997. After that date, volunteers from the applicant mowed the lawn and began cleaning up the yard and inside the house. During the period July 7, 1997, through July 12, 1997, the roof on the house was replaced. Beginning on July 14, 1997, the members of the applicant painted the interior of the house. During the first week in August, the sewer under the house was replaced and an air-conditioning unit was installed. (Appl. Ex. No. 7)

12. An evangelist who was conducting a revival at the applicant's church and his wife stayed in the house from August 10, 1997, through August 16, 1997. (Tr. p. 15, Appl. Ex. No. 7)

13. Rev. Short and his wife live approximately 20 miles from the applicant's church. On two Saturday nights in September, Rev. Short and his wife drove down from their home and stayed over in the house on this parcel. By driving down and staying over they could sleep later and still be on time to conduct religious services. (Tr. pp. 15 & 16)

14. On October 4, 1997, members of the church insulated around the foundation and also insulated the water pipes. (Tr. p.15, Appl. Ex. No. 7)

15. Beginning on November 5, 1997, the youth group of the applicant began meeting in this house every other Wednesday night. The youth group consisted of approximately 12 to 14 teenagers. The youth group used all of the house on this parcel for its meetings, except the two bedrooms. The youth group has met in this house every other Wednesday night from November 5, 1997 to the date of the hearing in this matter. These meetings included both worship and activities. (Tr. pp.15-19, Appl Ex. Nos. 5 & 7)

16. The house on this parcel contains 744 square feet. The total square footage of the house excluding the two bedrooms is 549 square feet. Consequently, the youth group was using 74% of the house. (Appl. Ex. No. 5)

17. Before November 5, 1997, the youth group had been meeting in the fellowship hall in the church sanctuary building across the street. (Tr. p. 19)

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

35 **ILCS** 200/15-40 exempts certain property from taxation as follows:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise used with a view to profit, is exempt, including all such property owned by churches or religious institutions or denominations and used in conjunction therewith as housing facilities provided for ministers (including bishops, district superintendents and similar church officials whose ministerial duties are not limited to a single congregation), their spouses, children and domestic workers, performing the duties of their vocation as ministers at such churches or religious institutions or for such religious denominations, and including the convents and monasteries where persons engaged in religious activities reside.

A parsonage, convent or monastery or other housing facility shall be considered under this Section to be exclusively used for religious purposes when the church, religious institution, or denomination requires that the above listed persons who perform religious related activities shall, as a condition of their employment or association, reside in the facility.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County

Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986).

Based on the foregoing findings of fact, I conclude that the applicant is a religious organization. I also conclude that the applicant owned the parcel here in issue and was in possession of same during the period May 26, 1997, through December 31, 1997.

The fact that the evangelist and his wife stayed in the house on this parcel from August 10, 1997, through August 16, 1997, while he was conducting a revival at the applicant's church, does not qualify as a religious or exempt use of the house. It is clear from a reading of the religious exemption statute, 35 ILCS 200/15-40, that to qualify for exemption, the occupant of a church or denomination owned residence must be an employee of that church or denomination. The case which held that the so called "parsonage exemption" was constitutional also required that the resident of the house must be an employee of the church or other religious organization which owned the house in which the minister lived. McKenzie v. Johnson, 98 Ill.2d 87 (1983).

The fact that Rev. and Mrs. Short stay in the house on this parcel occasionally on a Saturday night also does not qualify as a religious or exempt use of this house. Since Rev. Short and Mrs. Short live 20 miles from this parcel it is obvious that it is not a condition of his employment that he live in the house on this parcel. In addition, the Supreme Court in the McKenzie case determined that for a parsonage to qualify for exemption, it must reasonably and substantially facilitate the aims of religious worship or religious instruction because the pastor's religious duties require him to live in close proximity to the church. The second test in the McKenzie case is that a parsonage may qualify for exemption because it has unique facilities for religious worship and instruction or is primarily used for such purposes. No evidence was presented in this case to support a conclusion that the applicant qualified under either of the foregoing two tests.

In the case of Weslin Properties, Inc. v. Department of Revenue, 157 Ill.App.3d 580 (2nd Dist. 1987), Weslin Properties, on May 26, 1983, purchased a 24.3 acre tract to be developed into an Urgent Care Center, hospital, and related medical facilities. During 1983, a site plan was approved and an architect was hired. During 1984, construction on the Urgent Care facility

began. In 1985, the Urgent Care Center was completed and occupied. The Court held that the urgent Care facility qualified for exemption during 1983 but that the remainder of said parcel did not qualify for exemption during that year. The plans for the remainder of said parcel were not complete and Weslin Properties had not satisfied the Court that during 1983 all of the intended uses of the remainder of that parcel would qualify for exemption. In this case, the first two uses of the house by the evangelist and his wife and Rev. Short and his wife did not qualify for exemption. Consequently, the adaptation of this parcel and the house thereon from the date of possession to the date use began does not qualify for exemption since all of the uses of this parcel did not qualify for exemption.

The use of the house other than the bedrooms by the youth group of the applicant for meetings and worship activities on a regular basis beginning November 5, 1997, does constitute a religious use of this parcel. Where an identifiable portion of a property was used for an exempt purpose while the remainder was used primarily for nonexempt purposes, the Courts have held that the portion used for exempt purposes qualified for exemption, and the remainder did not qualify for exemption. City of Mattoon v. Graham, 386 Ill. 180 (1944); and First Methodist Episcopal Church of Chicago v. City of Chicago, 26 Ill. 482 (1861).

I therefore recommend that 74% of this residence and 74% of this parcel be exempt from real estate taxation for 16% of the 1997 assessment year.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
January 12, 1999